

**NO. 03-20-00129-CV**

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**IN THE COURT OF APPEALS  
THIRD COURT OF APPEALS DISTRICT OF TEXAS  
AUSTIN, TEXAS**

FILED IN  
3rd COURT OF APPEALS  
AUSTIN, TEXAS  
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JEFFREY D. KYLE  
Clerk

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Qatar Foundation for Education, Science and Community Development,  
Appellant

v.

Ken Paxton, Texas Attorney General and Zachor Legal Institute,  
Appellees

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On appeal from the 200th District Court of Travis County, Texas  
Trial Court Case No. D-1-GN-18-006240

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**EMERGENCY MOTION FOR REVIEW OF  
TRIAL COURT'S ORDER DENYING APPELLANT'S  
MOTION TO SUPERSEDE JUDGMENT PENDING APPEAL**

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COMMUNITY DEVELOPMENT**

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Pursuant to Texas Rule of Appellate Procedure 24.4(a), Appellant Qatar Foundation for Education, Science and Community Development (“Appellant” or “QF”) files this Emergency Motion for Review of the trial court’s denial of its Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment (“Motion to Supersede”) and respectfully shows the Court as follows:

**I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

QF respectfully moves the Court to review and overturn the trial court’s order denying Appellant’s Motion to Supersede the final judgment in this case. The trial court’s order was based on a clear error of law and, unless overturned, threatens to inflict serious and irreparable harm on QF.

QF brought the underlying case to prevent the disclosure of its confidential, sensitive, and trade secret information. In 2018, Appellee Ken Paxton, Texas Attorney General (the “Attorney General”) issued an open records ruling under the Texas Public Information Act finding that certain requested records held by Texas A&M University (“Texas A&M”) were not exempt from disclosure. Pursuant to § 552.325 of the Texas Public Information Act, QF brought the underlying action seeking to set aside portions of the Attorney General’s ruling and declare that the records at issue were exempt from disclosure.

The trial court, notwithstanding controlling authority from the Texas Supreme Court, held that private parties cannot bring claims to prevent the disclosure of their information under the Texas Public Information Act and entered a final judgment dismissing the case for lack of jurisdiction. *See Boeing v. Paxton*, 466 S.W.3d 831, 842 (Tex. 2015) (“Boeing has the right to protect its own privacy and property interest through the judicial remedy section 552.325 provides.”).

QF appealed that jurisdictional ruling and filed a motion to suspend enforcement of the judgment pending appeal and to set the amount required to supersede the judgment. The trial court denied that motion, holding that “there is no ‘judgment’ in this case that any party could enforce.” Exhibit 1.<sup>1</sup>

As a result, QF now seeks relief from this Court under Appellate Rule 24.4(a). In order to maintain the status quo and prevent the disclosure of QF’s confidential information, QF respectfully moves the Court to supersede the final judgment during the pendency of the appeal and set the amount required to supersede the judgment. In the absence of the requested relief, the disclosure of QF’s confidential information would not only moot the jurisdictional appeal, it would also deprive QF of a trial on the merits if this Court reverses the jurisdictional dismissal. The requested relief is therefore necessary to prevent QF from profound and irreparable harm.

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<sup>1</sup> Because the Clerk’s Record has not yet been filed, Appellant has attached hereto a copy of the relevant pleadings, filings, and orders from the trial court.

## **II. ISSUES PRESENTED**

1. Did the trial court err in holding that a final judgment granting a plea to the jurisdiction is not a “judgment” that can be superseded under Appellate Rule 24.4 and by refusing to supersede the judgment when its failure to do so could render the appeal on the merits moot?

## **III. TRIAL COURT PROCEDURAL HISTORY**

On October 12, 2018, QF—a private, nonprofit organization located in Doha, Qatar—brought this action against the Attorney General to prevent the disclosure of confidential and sensitive financial information requested from Texas A&M under the Texas Public Information Act pursuant to Attorney General Letter Ruling OR2018-20240. Exhibit 2.

Pursuant to § 552.325 of the Texas Public Information Act, QF did not name the requestor of the information as a defendant but did provide the requestor with notice. Appellee Zachor Legal Institute (“Zachor”) intervened in the action.

QF and Zachor filed cross-motions for summary judgment on the merits of whether the records at issue are exempt from disclosure. The morning of the hearing on the motions for summary judgment, Zachor filed a “Reply, Executive Summary of Argument and Plea to the Jurisdiction.” Exhibit 3. The plea to the jurisdiction argued that “[n]o provision of the TPIA authorizes a third party that asserts privacy or property interests to file a lawsuit to challenge a decision of the Attorney General” and that Texas A&M was not a party to the lawsuit. *Id.* at 4.

QF and the Attorney General filed post-hearing briefs opposing Zachor's plea to the jurisdiction. Exhibits 4 and 5, respectfully. For its part, the Attorney General stated that Zachor's jurisdictional argument "contradicts the plain text of the PIA and Supreme Court precedent," namely *Boeing, supra*. Exhibit 5 at 1, 3.

The trial court nevertheless granted Zachor's plea to the jurisdiction and entered a final judgment by signing its order on January 17, 2020 and filing the order on January 21, 2020 (the "Judgment"). Exhibit 6. The Judgment held "that this case shall be and is hereby dismissed for lack of jurisdiction," which disposed of all parties and all claims. *Id.* QF timely filed its Notice of Appeal from the Judgment on February 13, 2020.

That same day, QF also filed in the trial court its Motion to Supersede pursuant to Texas Rules of Appellate Procedure 24.1 and 24.2. Exhibit 7. QF argued that it would be "irreparably damaged" if the Judgment were not superseded because "[o]nce the confidential and sensitive information is made public, the damage to QF will have already been done" and would render an appeal moot. *Id.* at ¶¶ 10-15.

Zachor filed a response brief. Exhibit 8. Zachor first argued that an order granting a plea to the jurisdiction is not a "judgment" and therefore, cannot be superseded. *Id.* at 1-4. Zachor further argued that a stay is improper because Texas A&M is not a party to the suit and that QF "cannot show how it will be irreparably injured." *Id.* at 5-6.



Appellant filed a reply brief, re-butting Zachor’s arguments and re-attaching record evidence of the irreparable harm it would suffer if its confidential and sensitive information requested under the Texas Public Information Act were disclosed. Exhibit 9.

On February 27, 2020, the trial court denied Appellant’s Motion to Supersede, stating that “there is no ‘judgment’ in this case that any party could enforce” (the “Order”). Exhibit 1.

#### **IV. STANDARD OF REVIEW**

A Court of Appeals may review a trial court’s ruling regarding “the determination whether to permit suspension of enforcement” of a judgment. TEX. R. APP. P. 24.4(a).

A trial court’s refusal to permit an appellant to supersede an order is reviewed for an abuse of discretion. *See* TEX. R. APP. P. 29.2. A trial court abuses its discretion when it “reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze the law correctly or apply the law correctly to the facts.” *In re Mustang Asset Recovery, Ltd.*, No. 05-19-01036-CV, 2019 Tex. App. LEXIS 10605, at \*5-6 (Tex. App.—Dallas Dec. 6, 2019, no pet.). In addition, “[i]f the trial court’s refusal to permit the judgment to be superseded causes the appeal to become moot, the appellant has been denied an effective appeal and an abuse of discretion is shown.” *Allibone v. Robinson*, No. 03-17-00360-CV,

2017 Tex. App. LEXIS 6131, at \*5 (Tex. App.—Austin June 29, 2017, no pet.), quoting *Mossman v. Banatex*, 440 S.W.3d 835, 839 (Tex. App.—El Paso 2013, no pet.).

Any motion for review by the appellate court “must be heard at the earliest practicable time.” TEX. R. APP. P. 24.4(d). This Court may order changes to the amount of security or “require other changes in the trial court order.” *Id.*

## **V. ARGUMENT**

The trial court erred as a matter of law and abused its discretion by denying QF’s Motion to Supersede. The underlying case centered on Appellant’s right to prevent the disclosure of its confidential and sensitive financial information by challenging Attorney General Letter Ruling OR2018-20240. Exhibit 1. After the trial court dismissed QF’s claims for lack of jurisdiction, QF sought to maintain the status quo pending appeal by suspending the enforcement of Attorney General Letter Ruling OR2018-20240 as to the disclosure of Appellant’s confidential and/or trade secret information and preventing any attempt by Zachor to obtain the information while the appeal is pending.

The trial court, however, denied QF’s motion, stating that “there is no ‘judgment’ in this case that any party could enforce.” Exhibit 1. This was a clear error of law. An order granting a plea to the jurisdiction and dismissing all claims is a final judgment that may be superseded under Appellate Rule 24. The trial court’s

Order was also an abuse of discretion because if QF's confidential information were released while the appeal is pending, QF's right of appeal would be moot—along with its right to a trial on the merits if this Court reverses the jurisdictional dismissal.

Respectfully, this Court should reverse the trial court's Order and enter an order to protect QF's confidential information from disclosure while this appeal is pending. QF furthermore requests that the Court require only a nominal bond because Zachor has not shown that it will be harmed by maintaining the status quo.

**A. The Trial Court Erred As a Matter of Law by Holding that an Order Granting a Plea to the Jurisdiction is not a Judgment that can be Superseded Under Appellate Rule 24.**

Unless the law or Texas Rules of Appellate Procedure provide otherwise, a judgment debtor is entitled to supersede a judgment and thus defer its enforcement while pursuing an appeal. *WC 1st & Trinity, LP v. Roy F. & Joann Cole Mitte Found.*, No. 03-19-00905-CV, 2020 Tex. App. LEXIS 932, at \*2 (Tex. App.—Austin Feb. 3, 2020, no pet. h.); *see also Elizondo v. Williams*, 643 S.W.2d 765, 767 (Tex. App.—San Antonio 1982, no writ) (“All final judgments, absent a statutory prohibition, may be superseded pending appeal by the filing of a proper supersedeas bond.”).

When, as here, a judgment is for something other than money or an interest in real property, the amount of the bond is governed by Appellate Rule 24.2(a)(3), which provides that:

[T]he trial court must set the amount and type of security that the judgment debtor must post. The security must

adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.

TEX. R. APP. P. 24.2(a)(3).

Here, the trial court did not even reach the issue of what an appropriate bond amount would be. Instead, it held that its Order granting Zachor's plea to the jurisdiction was not a "judgment" that could be superseded under Appellate Rule 24.2(a)(3). Exhibit 1. That is incorrect as a matter of law.

First, a grant of a plea to the jurisdiction is unequivocally a final judgment. *See Morris v. Houston Indep. Sch. Dist.*, 388 S.W.3d 310, 312, fn. 2 (Tex. 2012) ("[T]he court ... rendered a final judgment granting the taxing entities' plea to the jurisdiction and dismissing the case."); *NBL 300 Grp. Ltd. v. Guadalupe-Blanco River Auth.*, 537 S.W.3d 529, 532 (Tex. App.—Austin 2017, no pet.) ("[T]he trial court entered a final judgment in favor of GBRA, granting the GBRA's plea to the jurisdiction and dismissing NBL's case in its entirety.").

Second, a grant of a plea to the jurisdiction may be superseded like any other final judgment. Indeed, the Dallas Court of Appeals recently recognized that an order granting a plea to the jurisdiction was a "final judgment" and issued injunctive relief to maintain the status quo while that order was on appeal. *In re Park*, No. 05-

19-00774-CV, 2019 Tex. App. LEXIS 9032 (Tex. App.—Dallas Oct. 10, 2019, no pet.). The plaintiff in *Park* filed suit to prevent the removal of a monument by the city and the trial court issued a “final judgment” granting the city’s plea to the jurisdiction. *Id.* at \*2. The plaintiff appealed and sought an injunction to prevent the monument from being moved while the appeal was pending. *Id.* at \*2. The court of appeals granted the injunction and ordered the plaintiff to post a supersedeas bond, holding that “if this Court should conclude on the merits of the underlying appeal that the trial court erred [in granting the plea to the jurisdiction] and the Monument has already been moved, demolished, damaged, or sold this Court’s judgment would be a nullity.” *Id.* at \*4.

The same result has been reached in other “take-nothing” judgments. *See e.g., Haedge v. Cent. Tex. Cattlemen’s Ass’n*, No. 07-15-00368-CV, 2016 Tex. App. LEXIS 2311, at \*4-6 (Tex. App.—Amarillo March 3, 2016, no pet.). This case involved the use of property for cattle grazing. *Id.* at \*1-2. After trial, the trial court entered a take-nothing judgment denying all claims asserted by appellant but superseded the judgment pending appeal. *Id.* at \*2-3. On appeal, the appellees argued that “the trial court could not set supersedeas in this case because enforcement of a take-nothing judgment cannot be suspended because, in such a judgment, there is neither a judgment debtor nor is there anything to be suspended.” *Id.* at \*6-7. The appellate court **rejected** that argument, finding that the take-nothing

judgment effectively removed appellants' right to graze their cattle, which was the heart of the appeal. *Id.* at \*7. "As such, refusing to permit the judgment to be superseded would deny appellants their appeal by rendering it moot" and therefore, the trial court did not abuse its discretion in superseding the judgment. *Id.* at \*7-8.

For this reason alone, the trial court's Order denying Appellant's Motion to Supersede "because there is no 'judgment' in this case that any party could enforce," Exhibit 1, was incorrect as a matter of law and should be reversed.

**B. A Trial Court May Not Decline to Supersede A Judgment When That Decision Would Render the Appeal Moot.**

While Rule 24.2(a)(3) provides the "trial court a measure of discretion ... that discretion does not extend to denying a party any appeal whatsoever." *In re Dallas Area Rapid Transit*, 967 S.W.2d 358, 360 (Tex. 1998). Thus, a trial court abuses its discretion when its refusal to supersede a judgment would render an appeal on the merits moot. *See id.*; *Mossman*, 440 S.W.3d at 839 (holding that the trial court abused its discretion by denying the motion to supersede the judgment because "in the event [appellant] is successful on appeal ... our judgment cannot undo the TAC's transmission of the notice" and that "would render the appeal moot"); *Hydroscience Techs., Inc. v. Hydroscience, Inc.*, 358 S.W.3d 759, 761 (Tex. App.—Dallas 2011, pet. denied); *In re Park*, 2019 Tex. App. LEXIS 9032 (discussed above); *Haedge*, 2016 Tex. App. LEXIS 2311 (discussed above); *Allibone*, 2017 Tex. App. LEXIS 6131, at \*6-7; *Devine v. Devine*, No. 07-15-00126-CV, 2015 Tex. App. LEXIS 5173,

at \*7-9 (Tex. App.—Amarillo May 20, 2015, no pet.) (holding that the trial court abused its discretion by denying the motion to supersede the judgment because if “the property sells while the appeal is pending, Matt’s appeal would be rendered moot because his potential right to purchase the property ... would be permanently lost”).

The *DART*, *Hydroscience*, and *Allibone* cases vividly illustrate the trial court’s error here. In *DART*, like in this case, the disclosure of documents pursuant to the Texas Public Information Act was at issue. *In re DART*, 967 S.W.2d at 360. The Texas Supreme Court held that:

To allow a trial court discretion to refuse supersede a judgment requiring production of information under the Act is to give that court the power to deny the governmental body any effective appeal, for once the requested information is produced, an appeal is moot. The rule does not permit such a result. *DART* has no adequate remedy on appeal. In fact, unless relief is granted, it will have no appeal at all.

*Id.* at 360. The Supreme Court subsequently affirmed its holding in *DART*, noting that it was “troubled that the trial court’s refusal to stay its judgment effectively denied *DART* any appeal whatsoever, ‘for once the requested information is produced, an appeal is moot’—a result ‘the rule does not permit.’” *In re State Bd. For Educator Certification*, 452 S.W.3d 802, 806 (Tex. 2014).<sup>2</sup>

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<sup>2</sup> In the trial court, Zachor argued that *DART* is distinguishable because in that case the public body holding the information was the plaintiff. That fact is irrelevant to the Supreme Court’s

Similarly, in *Hydroscience*, the appellee initiated the proceeding to compel examination of appellant's books and records. 358 S.W.3d at 760. The trial court ordered appellant to promptly permit appellee to examine the company's books. *Id.* The trial court denied appellant's motion to post a supersedeas bond and instead ordered the appellee to post a bond. *Id.* The appellate court found that the trial court abused its discretion because "[i]f this Court holds on appeal that appellee does not have shareholder status, it should never have been allowed to inspect the books" and "[t]he damage caused by the inspection and sharing of that information ... will have been done." *Id.* at 761.

This Court reached the same conclusion in *Allibone*. The issue in that case was "whether Allibone was required to comply with the subpoena and produce his patient's records and the ultimate relief he was seeking was protection from having to comply with the subpoena." *Allibone*, 2017 Tex. App. LEXIS 6131, at \*6. This Court found that "[i]n this context, once Allibone complies with the subpoena and produces the records, any judgment concerning the subpoena would not have a practical legal effect on a then-existing controversy. Thus, his appeal would be moot." *Id.* Therefore, this Court held that the trial court abused its discretion in denying the appellant's Rule 24 motion. *Id.* at 7.

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finding that disclosing records while the appeal is pending would render the appeal moot. In *DART*, as in this case, it was the appellant's information that was requested, and thus it was the appellant who would be injured by disclosure of that information.



For the same reasons, the trial court here abused its discretion in denying QF's Motion to Supersede the Judgment. The fundamental issue in this lawsuit is whether QF's records are exempt from disclosure, and the trial court's jurisdiction to address that issue is currently on appeal before this Court. If, however, QF's records are disclosed prior to the resolution of the appeal, then the appeal would be moot and the damage to QF would already be done. Moreover, if QF prevails on appeal, its right to a trial on the merits would be moot if the records have already been released. Accordingly, suspending the judgment is necessary to preserve QF's right to appeal and pursue its claims on the merits.

In the trial court, Zachor argued that suspending the judgment would be inappropriate because the government agency holding the records, Texas A&M, is not a party to this lawsuit. The trial court's Order denying QF's Motion to Supersede did not adopt that argument, which is incorrect and irrelevant to the issue here.

QF does not seek injunctive relief directly against Texas A&M either on the merits or in this Motion. As to the merits, QF's claims are directed at the Attorney General because it was the Attorney General who issued Letter Ruling OR2018-20240, which found that the records at issue were not exempt from disclosure. As to the Motion here, QF seeks to supersede the trial court's determination that it has no jurisdiction over QF's claims and thereby prevent Zachor from attempting to

enforce the Attorney General’s Letter Ruling pending appeal. Thus, all of the necessary parties are before this Court.

Accordingly, this Court should reverse the trial court’s Order denying QF’s Motion to Supersede and enter an order maintaining the status quo by suspending the enforcement of Attorney General Letter Ruling OR2018-20240 as to the disclosure of Appellant’s confidential and/or trade secret information and preventing any attempt by Zachor to obtain the information while the appeal is pending.

**C. A Nominal Bond Should Be Set Because Zachor Identified No Harm Resulting From a Suspension of the Judgment**

Texas Rule of Appellate Procedure 24.2(a)(3) mandates that: “the trial court must set the amount and type of security that the judgment debtor must post.” TEX. R. APP. P. 24.2(a)(3)(emphasis added). Thus, the issue for the Court to determine is what amount would be sufficient to “adequately protect the judgment creditor against loss or damage that the appeal might cause.” *Id.* (emphasis added).

Here, Zachor, the judgment creditor, failed to present any evidence of harm that it would suffer by waiting until after the appeal is resolved to potentially receive the records at issue. Nor did Zachor even identify its intended use for the requested information. Accordingly, a nominal bond is sufficient to protect Zachor while the appeal is pending.

Similarly, the Attorney General will suffer no loss or damage if the judgment is superseded pending appeal, and it does not oppose the relief QF seeks or the amount of bond.

Because superseding the Judgment will not cause any loss or damage to Appellees, QF submits that a nominal bond in the amount of \$1,000.00 is appropriate.

**D. No Bond Posted By Zachor Could Offset The Irreparable Harm Appellant Will Suffer If the Judgment is Not Superseded.**

In the trial court, Zachor offered to post a nominal bond to deny QF's Motion to Supersede. While Appellate Rule 24.2(a)(3) gives a trial court limited discretion to decline to supersede a judgment by having the judgment creditor post a bond, that provision does not apply here. It applies only where the judgment creditor (here, Zachor) can post a bond "that will secure the judgment debtor [QF] against any loss or damage caused" if the judgment on appeal is ultimately reversed. Where no bond would adequately protect the judgment debtor, a request under this provision should be denied. *See e.g., WC Ist & Trinity, LP*, 2020 Tex. App. LEXIS 932, at \*8 (this Court found that judgment debtor could not be adequately protected against "any loss or damage that the appeal might cause" by the judgment creditor posting a supersedeas bond where a receiver was appointed to control two companies).

Here, the record evidence is clear that QF will suffer unquantifiable and irreparable harm if the requested information is disclosed while the appeal is

pending. Not only would the release of the records deprive QF of its ability to appeal the Order of dismissal and pursue the underlying merits of its claims, QF would also suffer other harm due to the nature of the information at issue.

The records that are the subject of this lawsuit contain confidential and proprietary information regarding the relationship between QF and Texas A&M. Michael A. Mitchell, QF's General Counsel, has testified that QF's negotiations and arrangements with Texas A&M, including the amount of funding, are highly confidential and are protected within QF through restricted access and confidential designations. Exhibit 9 at Ex. A. ¶¶ 10, 15. QF competes with private organizations and governments throughout the Middle East to attract partner universities to their home countries. *Id.* at ¶ 12. Information regarding the negotiations and funding with Texas A&M has substantial value to QF and its competitors, the disclosure of which would cause competitive harm to QF. *Id.* at ¶¶ 10, 16-17. Specifically, it would allow competing organizations to gain a competitive advantage by having the information necessary to outbid or offer more favorable terms to universities. *Id.* at ¶ 17.

Indeed, in relation to a different Texas Public Information Act request that was subsequent to the one at issue in this case but sought information of the same nature, QF objected and the Attorney General determined that such information, "if

released, would give advantage to a competitor or bidder.” Attorney General Open Records Decision OR2019-01288.<sup>3</sup>

Because disclosure of QF’s confidential information could result in unquantifiable irreparable harm, no amount of security posted by Zachor would be sufficient to secure QF against “any loss or damage caused” during the pendency of the appeal. As such, the Court should decline any request by Zachor to post a bond.

## **VI. PRAYER**

For these reasons, Appellant Qatar Foundation for Education, Science and Community Development requests that this Court:

- 1) Reverse the trial court’s denial of its Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment;
- 2) Order that enforcement of the trial court’s judgment be suspended during the pendency of the appeal to the Third Court of Appeals and, if necessary, the Supreme Court of Texas;
- 3) Order that during the pendency of the appeal that Appellant’s confidential and/or trade secret information should not be disclosed to Zachor by (a) suspending the enforcement of the Attorney General Letter Ruling OR2018-20240 as to the disclosure of Appellant’s confidential and/or trade secret information and (b) enjoining Zachor from seeking to enforce the Attorney General Letter Ruling OR2018-20240;
- 4) Set the amount of the supersedeas bond to be posted by Appellant at \$1,000.00 or at such other amount as the Court deems appropriate; and
- 5) For any other relief to which Appellant may be entitled.

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<sup>3</sup> Available at <https://www2.texasattorneygeneral.gov/opinions/openrecords/51paxton/orl/2019/pdf/or201901288.pdf>

DATED and FILED on March 6, 2020.

Respectfully submitted,

/s/ Amanda D. Price

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*Attorneys for Appellant The Qatar  
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**CERTIFICATE OF CONFERENCE TEX. R. APP. P. 10.1(a)(5)**

I hereby certify that on March 6, 2020, counsel for Appellant conferred with counsel for Appellee Ken Paxton, Texas Attorney General (“Attorney General”) and Appellee Zachor Legal Institute (“Zachor”) via email. The Attorney General is unopposed to the requested relief. Zachor is opposed.

/s/ Amanda D. Price

Amanda D. Price

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Appellate Procedure on the 6th day of March, 2020 on each of the following persons listed below by the means indicated:

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jriggs@r-alaw.com

/s/ Amanda D. Price

Amanda D. Price

## **APPENDIX**

<b><u>Exhibit:</u></b>	<b><u>Filing Date:</u></b>	<b><u>Document Title:</u></b>
Exhibit 1:	2/27/2020	Order Denying Motion to Suspend Enforcement of Order of Dismissal
Exhibit 2:	10/12/2018	Plaintiff's Original Petition
Exhibit 3:	12/17/2019	Zachor Legal Institute's Reply, Executive Summary of Argument, and Plea to the Jurisdiction
Exhibit 4:	1/03/2020	Plaintiff's Post-Hearing Brief
Exhibit 5:	1/03/2020	Defendant Ken Paxton's Response to Intervenor's Plea to the Jurisdiction
Exhibit 6:	1/21/2020	Order Granting Plea to the Jurisdiction
Exhibit 7:	2/13/2020	Plaintiff's Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment
Exhibit 8:	2/26/2020	Zachor Legal Institute's Response to Plaintiff's Motion to Suspend Enforcement of Judgment
Exhibit 9:	2/27/2020	Plaintiff's Reply in Support of Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment



# **EXHIBIT 1**

FEB 27 2020

At 3:44 P.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,

*Plaintiff,*

v.

KEN PAXTON,  
TEXAS ATTORNEY GENERAL

*Defendant.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT COURT

**ORDER DENYING MOTION TO SUSPEND ENFORCEMENT  
OF ORDER OF DISMISSAL**

On this day, the Plaintiff's Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment came on for consideration, and the Court having considered the motion, the opposition, and the arguments of all parties, finds that the Motion should be DENIED because there is no "judgment" in this case that any party could enforce.

IT IS HEREBY ORDERED that the Qatar Foundation's Motion to Suspend Enforcement of Judgment Pending Appeal shall be and is hereby DENIED.

SIGNED on this 27<sup>th</sup> day of February, 2020.

JUDGE PRESIDING

KARIN CRUMP

# **EXHIBIT 2**

D-1-GN-18-006240

CAUSE NO. \_\_\_\_\_

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,*Plaintiff,*

v.

KEN PAXTON,  
TEXAS ATTORNEY GENERAL*Defendant.*§  
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH

\_\_\_\_ JUDICIAL DISTRICT COURT

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Qatar Foundation for Education, Science and Community Development hereby files its Original Petition against Ken Paxton, Texas Attorney General and would show the Court as follows:

**I. DISCOVERY**

1. Discovery should be conducted under Level Three pursuant to Texas Rule of Civil Procedure 190.4.

**II. PARTIES**

2. Qatar Foundation for Education, Science and Community Development ("QF") is a non-profit organization headquartered in Doha, Qatar, which may be served through its attorney of record in this case.

3. Defendant Ken Paxton, Texas Attorney General, is an elected state official that may be served by delivering citation and a copy of the petition to him at 209 West 14th Street, Austin, Texas 78701.

### **III. NOTICE TO REQUESTOR**

4. Pursuant to section 552.325 of the Public Information Act, Marc Greendorfer of Zachor Legal Institute, who requested the information at issue, is not named here as a defendant. By copy of this petition, he is provided notice as follows: (1) the subject matter and cause number for this lawsuit and the court in which it has been filed; (2) that he may choose not to participate in the case or to intervene in the lawsuit; (3) that the lawsuit is against the Attorney General, who is named as defendant; and (4) that the name and address of the Attorney General are as set forth above. The phone number for the Attorney General is (512) 463–2100.

### **IV. VENUE**

5. Venue is proper in Travis County pursuant to Texas Government Code section 552.325.

### **V. JURISDICTION**

6. The Court has subject matter jurisdiction over this matter pursuant to Texas Government Code section 552.001, *et seq.* and its inherent power to regulate the *ultra vires* acts of governmental agencies. QF has standing to assert these claims pursuant to Texas Government Code section 552.325.

### **VI. BACKGROUND FACTS**

7. This is an action to prevent disclosure of confidential financial information concerning the relationship between QF and Texas A&M University (TAMU). These records are sought by Marc Greendorfer (“Requestor”) pursuant to the Texas Public Information Act (“PIA”). Requestor specifically names QF in his request for information.

8. QF operates programs dedicated to education, science, and community development. It is responsible for funding much of the development in Education City, a hub for higher education outside Doha. Over the course of the past twenty years, Education City has grown from a single school to a multi-university campus that hosts students from all over the world. In addition to TAMU, Carnegie Mellon, Cornell, Georgetown, Northwestern, and Virginia Commonwealth University have all established campuses in Education City.

9. As part of its mission, QF (along with other entities) has made grants and donations to TAMU. These grants and donations are designed to further education and research in the region. Some of these grants and donations are pursuant to contracts between QF and TAMU.

10. Requestor is an attorney associated with the Zachor Legal Institute. According to its website, Zachor Legal Institute is “a legal think tank and advocacy organization . . . taking the lead in creating a framework to wage a legal battle against anti-Israel movements in America.” Its “primary focus is combatting BDS (Boycott, Divestment and Sanctions) anti-Semitic activities in the commercial sector.”<sup>1</sup>

11. On May 23, 2018, Requestor submitted a public records request to TAMU seeking “[a] summary of all amounts of funding or donations received by or on behalf of the University of Michigan [*sic*] from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018,” including QF. *See Exhibit A.*

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<sup>1</sup> See Zachor Legal Institute, About Us, <https://zachorlegal.org/about-us/> (last visited October 10, 2018).

12. On June 7, 2018, TAMU submitted a request for the Attorney General of Texas to determine whether TAMU could exclude donor identities from its response to the request under Texas Government Code section 552.1235. *See Exhibit B.* That section exempts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher learning.” Tex. Gov’t Code § 552.1235(a).

13. On August 14, 2018, the Office of the Attorney General of Texas issued an Open Records Letter Ruling, OR2018-20240. *See Exhibit C.* The Attorney General concluded that TAMU could withhold information identifying “donors” under section 552.1235. *Id.* at 2. But the Attorney General stated that TAMU would be required to release all remaining information requested, which would include information related to payments made by QF to TAMU pursuant to a contract. *Id.* at 2. In so doing, the Attorney General implicitly ruled that those payments were not “donations,” and therefore not exempt from disclosure under the PIA.

## **VII. DECLARATORY JUDGMENT**

14. The purpose of section 552.1235(a) is to permit a person to make donations, grants, or gifts to an institution of higher learning without revealing his or her identity. Simply because QF agreed to make some “grants,” and memorialized that agreement in a contract, does not mean that QF should be forced to reveal its identity or the amount of money it has contributed to higher education. Tex. Gov’t Code § 552.1235(a). The information related to these grants and donations is also confidential commercial information and constitutes a trade secret. Tex. Gov’t Code § 552.110. It should be exempt from disclosure.

15. For those reasons, and incorporating by reference all preceding paragraphs, QF requests that this Court enter a judgment declaring:

- a. that the information sought by Requestor concerns “grants” and donations” made to TAMU and that neither the amount of payments nor the identity of the grantor or donor should be disclosed. Tex. Gov’t Code § 552.1235.
- b. that the information sought by Requestor is confidential commercial or financial information and should not be disclosed. Tex. Gov’t Code § 552.110(b).
- c. that the information sought by Requestor is tantamount to a trade secret and should not be disclosed. Tex. Gov’t Code § 552.110(a).
- d. that the portion of Attorney General Ruling Letter OR2018-20240 requiring release of all remaining information other than donor identity is incorrect and without force or effect.

### **VIII. PRAYER**

In light of the foregoing, Plaintiff prays that this Court render the declaratory judgment as requested herein and grant such other and further relief, legal and equitable, to which Plaintiff shows itself entitled.



Respectfully submitted,

/s/ D. Patrick Long

D. Patrick Long

Texas State Bar No. 12515500

[pat.long@squirepb.com](mailto:pat.long@squirepb.com)

Alexander J. Toney

Texas State Bar No. 24088542

[alex.toney@squirepb.com](mailto:alex.toney@squirepb.com)

**SQUIRE PATTON BOGGS (US) LLP**

2000 McKinney Ave., Suite 1700

Dallas, Texas 75201

Tel: (214) 758–1500

Fax: (214) 758–1550

ATTORNEYS FOR PLAINTIFF QATAR  
FOUNDATION FOR EDUCATION, SCIENCE  
AND COMMUNITY DEVELOPMENT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served in accordance with the Texas Rules of Civil Procedure on this the 12th day of October, 2018, on the following:

Marc Greendorfer  
Zachor Legal Institute  
5919 US Highway 84  
Red Level, AL 36474  
[info@zachorlegal.org](mailto:info@zachorlegal.org)

/s/ D. Patrick Long

# EXHIBIT A

**B001108-052318 - Public Information Records**

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**Public Information Records Details**

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This request is for:

Texas A&M University

Summary of Request:

A summary of all amounts of funding or donations received by or on behalf of the University from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018.

Describe in detail the Record(s)  
Requested:

A summary of all amounts of funding or donations received by or on behalf of the University of Michigan from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018.

For purposes of this request, please include the following individuals and entities as being affiliated with the government of Qatar:

Individuals:

Tamim bin Hamad Al Thani;  
Hamad bin Khalifa bin Hamad bin Abdullah bin Jassim bin Mohammed Al Thani;  
Jawaher bint Hamad bin suhaim;  
Al Mayassa bint Tamim bin Hamad Al Thani;  
Hamad bin Tamim bin Hamad Al Thani;  
Jassim bin Tamim bin Hamad Al Thani;  
Aisha bint Tamim bin Hamad Al Thani;  
Anoud bint Mana Al Hajri;  
Naylah bint Tamim bin Hamad Al Thani;  
Abdullah bin Tamim bin Hamad Al Thani;  
Rodha bint Tamim bin Hamad Al Thani;  
Al-Qaqa bin Tamim bin Hamad Al Thani;  
Noora Bint Hathal Aldosari;  
Joaan bin Tamim bin Hamad Al Thani;  
Mohammed bin Tamim bin Hamad Al Thani;  
Abdullah bin Nasser bin Khalifa Al Thani;  
Ahmad bin Abdullah Al Mahmoud;  
Ashraf Muhammad Yusuf 'Uthman 'Abd al-Salam;  
Abd al-Malik Muhammad Yusuf 'Uthman 'Abd al-Salam;  
Mubarak Alajji;  
Sa'd bin Sa'd al-Ka'bi;  
Abd al-Latif bin 'Abdallah al-Kawari;  
Abu Abdulaziz al-Qatari;  
Mohammad Bin Saleh Al-Sada;  
Saad Sherida Al-Kaabi;  
Abdullah Mohd Essa Al-Kaabi;  
Faisal Bin Qassim Al-Thani;  
Kamel El-Agela;  
Fatma Al Remaihi;  
Hind bint Hamad Al Thani;  
Sould Al-Tamimi;  
Richard O'Kennedy ;  
Ilias Belharouak;  
Sabah Ismail Al-Haidoos; and  
Faisal Mohammad Al-Emadi

Entities:

- Qatar Ministry of Foreign Affairs
- Qatar Minister of State for Foreign Affairs
- Qatar Minister of Defense
- Qatar Minister of the Interior
- Qatar Ministry of Public Health
- Qatar Ministry of Energy and Industry
- Qatar Ministry of Municipal and Urban Planning
- Qatar Ministry of Environment
- Qatar Ministry of Finance
- Qatar Ministry of Culture, Arts and Heritage
- Qatar Ministry of Labor and Social Affairs
- Qatar Ministry of Education and Higher Education
- Qatar Ministry of Awqaf and Islamic Affairs
- Amiri Diwan – Sheikh Abdullah bin Khalifa Al Thani
- Qatar Investment Promotion Department
- Qatar Supreme Council for Family Affairs
- Qatar Supreme Judiciary Council
- Al Jazeera Media Network, including the following subsidiary organizations:
- News- Al Jazeera Arabic
- Al Jazeera English
- Al Jazeera Mubasher Al-'Ammah
- Al Jazeera Balkans (Balkans)
- Sports- beIN Media Group
- Educational- Al Jazeera Documentary Channel
- JeemTV

- Other- AJ+
- Aljazeera.com
- Jetty
- Al Jazeera Mobile
- Al Jazeera New Media
- Al Jazeera Center for Studies
- Al Jazeera International Documentary Film Festival
- beIN Media Group
- Miramax Films
- Qatar Petroleum
- Sidra Medical and Research Center
- RasGas Company Limited
- Al Faisal Holding Co
- Doha Film Institute
- Qatar Environmntl & Energy Res Inst
- Silatech
- Qatar Airways
- Qatar National Research Fund
- Jasoor Institute
- Qatar Foundation
- Qatar University
- Hamad Medical Corporation
- Qatar Biomedical Research Institute
- Construction Development Co LLC
- Qatar Leadership Center
- Ooredoo
- Maersk Oil Qatar
- Aramco Services co
- Qatar Computing Research Institute
- Education Above All
- Al Fakhoora
- Qatar Charity

Please also include any funding received from the above sources by or on behalf of student groups affiliated with, or operating with the consent of, the University.

Preferred Method to Receive  
Records:

Electronic via Records Center

**Category**

**Clarification(s)**

**OAG decision requested**

**Exceptions**

**Charges**

**Message History**

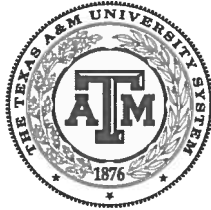
**Request Details**

Reference No: B001108-052318  
 Create Date: 5/23/2018 5:40 PM  
 Update Date: 5/24/2018 5:11 PM  
 Completed/Closed: No  
 Required Completion Date: 6/8/2018

Status:	Activity Assigned
Priority:	Medium
Assigned Dept:	TAMU_Open Records
Assigned Staff:	Open Records University
Customer Name:	Attorney Marc Greendorfer
Email Address:	info@zachorlegal.org
Phone:	6502799690
Group:	TAMU
Source:	Web

# EXHIBIT B





Office of General Counsel  
THE TEXAS A&M UNIVERSITY SYSTEM

June 7, 2018

Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**via UPS DELIVERY**

Re: Request for a Decision regarding a Public Information Request from Marc Greendorfer to Texas A&M University (B001108-052318)

Dear Open Records Division:

On May 24, 2018,<sup>1</sup> Texas A&M University (the “university”) received a public information request from Mark Greendorfer (the “Requestor”). The request, enclosed as Exhibit A, seeks information regarding certain funding and donations.

We believe that a portion of the information requested, a representative sample of which is enclosed as Exhibit B, contains information that is excepted from disclosure under section 552.1235 of the Texas Public Information Act, Chapter 552, Government Code (Act). Accordingly, we are requesting a decision regarding the enclosed, responsive information as we believe it is excepted from disclosure the Act.

**Section 552.1235 – Confidentiality of Identity of Private Donor to Institution of Higher Education**

We believe that the marked information in Exhibit B is excepted from public disclosure under section 552.1235 of the Act. This section provides:

- (a) The name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

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<sup>1</sup> The request was originally received on May 23, 2018 and a request for clarification was emailed to the Requestor on May 24, 2018. On May 24, 2018, the Requestor responded and clarified the request, making this the date of receipt of the request. The first business day after receipt of the clarified request was Friday, May 25, 2018. Texas A&M University was also closed for Memorial Day on May 28, 2018 by order of the A&M System Board of Regents. Thus, the 10th business day after the receipt of the request is Friday, May 8, 2018.

June 7, 2018

Page 2

- (b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.
- (c) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

TEX. GOV'T CODE ANN. § 552.1235 (West 2012).

Here, the marked information, enclosed as Exhibit B, identifies donors to the university. Therefore, we believe that these donor identities are confidential and excepted from disclosure under section 552.1235(a) of the Act.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely, .



Julie A. Masek  
Assistant General Counsel

Enclosure: Exhibits A & B

cc: Marc Greendorfer  
info@zachorlegal.org

TAMU Open Records

# EXHIBIT C



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS



August 14, 2018

Ms. Julie A. Masek  
Assistant General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2018-20240

Dear Ms. Masek:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 723308 (B001108-052318).

Texas A&M University (the "university") received a request for information pertaining to certain funding or donations received for a period of time.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.1235 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). For purposes of this exception, “institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as meaning “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2). You state the information you marked in the submitted information identifies donors to the university. Thus, the university must withhold the donors’ identifying information, which you marked, under section 552.1235 of the Government Code. The university must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

Ref: ID# 723308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

# **EXHIBIT 3**

**CAUSE NO. D-1-GN-18-006240**

<b>QATAR FOUNDATION FOR</b>	§	<b>IN THE DISTRICT COURT</b>
<b>EDUCATION, SCIENCE AND</b>	§	
<b>COMMUNITY DEVELOPMENT,</b>	§	
<b><i>Plaintiff,</i></b>	§	
	§	
<b>v.</b>	§	<b>200<sup>TH</sup> JUDICIAL DISTRICT</b>
	§	
<b>KEN PAXTON,</b>	§	
<b>TEXAS ATTORNEY GENERAL,</b>	§	
<b><i>Defendant.</i></b>	§	<b>OF TRAVIS COUNTY, TEXAS</b>

**ZACHOR LEGAL INSTITUTE'S  
REPLY, EXECUTIVE SUMMARY OF ARGUMENT,  
AND PLEA TO THE JURISDICTION**

**I. NATURE OF THE CASE**

This case concerns a foreign government's influence on Texas A&M University ("TAMU"), a public university, through secret donations and contracts. Because of public statements, we already know that the Qatar Foundation gives money to TAMU. What we do not know is exactly how much money the foundation gives and for what purpose. An issue is whether the fact of, the amount of, and the conditions on foreign funding of TAMU research and programs can be, as a matter of law, be withheld under section 552.1235 of the Texas Public Information Act (TPIA).

This case will determine whether an organization funded and sponsored by such a foreign government will be allowed to turn the TPIA on its head in order to influence, without public scrutiny, a public university by claiming a "proprietary interest" in such influence.

## II. SCOPE OF THE CASE AND ISSUES TO BE DECIDED

The following chronology is relevant to the scope of the issues raised in this lawsuit:

**May 24, 2018** TPIA request from Marc Greendorfer, attorney with the Zachor Legal Institute, to Texas A & M University, for information about all amounts of funding or donations from list of persons that expressly includes the Qatar Foundation

**August 14, 2018** Attorney General issues Tex. Att’y Gen. OR2018-20240, deciding that TAMU may withhold donor’s identity but must release remaining information

**October 12, 2018** Qatar Foundation files this lawsuit against the Attorney General, without naming TAMU, contesting OR2018-20240.

TAMU did not file this lawsuit to appeal the decision of the Attorney General. The Qatar Foundation has not amended its lawsuit to name TAMU. No provision of the TPIA authorizes a third party who objects to the release of information to appeal a decision of the Attorney General. As a result, the Qatar Foundation’s claims should be dismissed for lack of jurisdiction.

In the alternative, should the Court find that it has jurisdiction, only the first TPIA request is in dispute. Although Zachor submitted a subsequent TPIA request, TAMU submitted a request for a decision, and the Attorney General issued a decision, those events are not at issue here. The issues here are narrow:

- (1) Does section 552.1235 of the TPIA protect “the amount of funding or donations” to TAMU from the Qatar Foundation?
- (2) May the Qatar Foundation raise exceptions in addition to section 552.1235, and, if so, has the Qatar Foundation sustained its burden of proof that such exceptions apply?



### III. THE TPIA PROCESS

#### A. The Burden is on the Party Seeking to Withhold Information.

All information collected, assembled, or maintained by a governmental body is public and subject to disclosure unless the act explicitly excepts the requested information from disclosure. *See* Tex. Gov't Code § 552.001(a).

The TPIA is to be liberally construed in favor of granting a request for information; exceptions to the Act must be construed narrowly. *See* Tex. Gov't Code § 552.001; *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin 2002, no pet.).

When a governmental body receives a TPIA request for information that it wishes to withhold, it must request a decision from the Attorney General on whether particular TPIA exceptions protect the information, unless a previous determination has resolved the issue. Tex. Gov't Code § 552.301. As set forth in Zachor's Supplemental Motion for Summary Judgment, which is incorporated here by reference, a governmental body cannot request duplicative decisions.

If a third party's privacy or property interests are implicated, the governmental body may defer to the third party to assert its own interests. Here, TAMU did not assert that sections 552.104 or 552.110 apply or that its interests would be harmed if the amount of the Qatar Foundation's donations is disclosed. Further, as indicated, TAMU did not challenge the Attorney General's decision that

it should withhold only identifying information about the donations at issue and release the remainder.

### **B. The Role of the Attorney General**

The decisions of the Attorney General are considered by the courts, but they are not controlling. See *Greater Houston Partnership v. Paxton*, 463 S.W.3d 51, 58 (Tex. 2015) (“GHP”); see also *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015). The TPIA decision process by the Attorney General is not akin to an agency deciding a contested case. The Attorney General does not decide questions of fact. Here, the Attorney General issued Tex. Att’y Gen. OR2018-20240, deciding that although TAMU may withhold the donor’s identifying information under section 552.0235, TAMU must release the remaining information requested.

### **C. TPIA Challenges to Decisions of the Attorney General**

If a governmental body wishes to challenge a decision of the Attorney General, it may do so, but only under sections 552.324 and 552.325 of the TPIA. The deadline for the governmental body to do so is 30 days from receipt of the adverse decision. Tex. Gov’t Code § 552.324(b). The governmental body may not name the requestor in such a lawsuit, but the requestor may intervene. Tex. Gov’t Code § 552.325(a). No provision of the TPIA authorizes a third party that asserts privacy or property interests to file a lawsuit to challenge a decision of the Attorney General.

For these reasons, the Court lacks jurisdiction over the Qatar Foundation's claims. The Attorney General is not the custodian of TAMU's records. And section 552.3035 prohibits the Attorney General from releasing information submitted to it for review. The Qatar Foundation is trying to force the Attorney General to change his opinion. Such claims are barred by the doctrine of sovereign immunity.

Arguably, the Qatar Foundation could make TAMU an involuntary party to a lawsuit against the Attorney General under section 552.324 or could seek injunctive relief against TAMU to prohibit disclosure, but neither of those things has occurred here. It is now too late to do so.

Finally, in a judicial proceeding, the burden of proving that the requested information is excepted from disclosure is on the party seeking to withhold such information. *Thomas v. Cornyn*, 71 S.W.3d 473, 488 (Tex. App.—Austin 2002, no pet.) As a result, should the Court find that it has jurisdiction, it must hold Qatar to the burden of showing that the claimed exceptions apply.

#### **IV. SECTION 552.1235 DOES NOT APPLY**

Section 552.1235 provides as follows:

(a) The name or other information that would tend to disclose the identity of a person, *other than a governmental body*, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.

Tex. Gov't Code § 552.1235 (emphasis added).

Both the TAMU website and the Qatar Foundation website announce that the Qatar Foundation is a donor to TAMU generally and for the establishment of the TAMU campus in Qatar. The Qatar Foundation nonetheless contends that it is a purely private donor whose identity is protected by section 552.1235 of the TPIA. Because its identity clearly is known, however, the Qatar Foundation contends that the Court should *ignore* subsection (b) of section 552.1235 and direct TAMU to withhold details about the Qatar Foundation's donations. Zachor believes that neither the Court nor TAMU can ignore the TPIA in that manner.

Zachor is entitled to summary judgment on this claim for the simple reasons that: (1) the Qatar Foundation is not an anonymous private donor that the TPIA protects with section 552.1235; and (2) the law does not except from disclosure all other relevant information about donations, such as the amount or value of a gift, grant, or donation.

In addition, section 552.1235 only protects the identity of private donors. It does not protect the identity of a governmental body that makes a donation. Tex. Gov't Code § 552.1235(a). The Qatar Foundation has not shown, as a matter of law, that it is not a "governmental body" within the meaning of the TPIA.

**V. QATAR CANNOT SHOW COMPETITIVE HARM OR THAT THE AMOUNT OF DONATIONS IS CONFIDENTIAL COMMERCIAL INFORMATION**

The fact that both TAMU and the Qatar Foundation have publicly announced the Qatar Foundation's support of TAMU and of its TAMUQ campus on the Internet and elsewhere negates any element of secrecy.

The Qatar Foundation asserts that "the disclosure of the information at issue would be harmful to Texas A & M University." (Qatar Motion, p. 1) TAMU, however, is not a party to this lawsuit and has expressly declined to take a position on Qatar's assertion about the applicability of the proprietary exceptions. (Zachor Motion, Exhibit 6) As a result, the Qatar Foundation cannot demonstrate any competitive harm to TAMU, including to the TAMU campus in Qatar, TAMUQ.

Nor has the Qatar Foundation shown that it is subject to any competitive harm. The Qatar Foundation has failed to reconcile the fact that *it already has a TAMU campus in Qatar* and has since 2003. There is no evidence that TAMU has indicated any intent to terminate its relationship with Qatar – evidence that is essential to demonstrate the applicability of exceptions 552.104 and 552.110. There is no evidence that TAMU will have only one foreign campus. And there is no evidence that TAMU would refuse to accept the Qatar Foundation's millions of dollars in donations.

Similarly, Zachor seeks records about the amount of money the Qatar Foundation donated or granted to TAMU. Zachor did not request audited financial records or other information that Qatar Foundation may keep closely held or only

provides to third parties who request supporting documentation before conducting business with the foundation. There is no evidence that the amount of Qatar Foundation's donations or grants are the type of information not otherwise disclosed. In fact, both TAMU and Qatar Foundation have publicly touted certain donations and grants in the past.

In short, the Qatar Foundation fails to sustain its burden on sections 552.104 and 552.110.

Moreover, the TPIA itself requires the disclosure of the amount and value of a gift or grant. Tex. Gov't Code § 552.1235(b). The Qatar Foundation cannot claim that sections 552.104 and 552.110 negate the directive in section 552.1235(b) that the amount of donations must be disclosed. The fact that the Qatar Foundation did not make any effort to maintain anonymity is no reason to ignore the TPIA.

The Qatar Foundation cannot establish, under Tex. R. Civ. P. Rule 166a(c) or 166a(i) or otherwise, that the information at issue is excepted from required public disclosure.

### **Prayer**

For the reasons stated above, Zachor respectfully prays that the Court grant Zachor's motion for summary judgment, hold that QF take nothing by its claims, declare that the requested information must be released, and grant to Zachor such other relief to which it shows itself to be entitled.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by e-service on this 17<sup>th</sup> day of December, 2019, to:

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With a courtesy copy to Ms. Kim Fuchs

Jennifer S. Riggs

Jennifer S. Riggs

# **EXHIBIT 4**



CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR	§	IN THE DISTRICT COURT OF
EDUCATION, SCIENCE AND	§	
COMMUNITY DEVELOPMENT,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
KEN PAXTON,	§	
TEXAS ATTORNEY GENERAL	§	
	§	
<i>Defendant.</i>	§	200th JUDICIAL DISTRICT COURT

### **PLAINTIFF'S POST-HEARING BRIEF**

Plaintiff Qatar Foundation for Education, Science and Community Development ("QF") files this Post-Hearing Brief and would show the Court as follows:

#### **I. INTRODUCTION**

Exactly fifty minutes before this Court heard argument on the parties' motions for summary judgment, Zachor filed a reply brief to QF's motion for summary judgment. In this briefing, Zachor argued—for the first time—that QF lacks standing to bring this suit, thus depriving the Court of jurisdiction, and that Texas A&M University ("TAMU") should have either been necessarily joined as an involuntary Plaintiff, or been named as a Defendant in a separate lawsuit seeking injunctive relief.

As the Office of the Attorney General explained during oral argument, Zachor's arguments are wrong: the Supreme Court of Texas has clearly established that QF has the right to bring suit against the Attorney General to prevent the disclosure of the requested information and is not required to join TAMU. This is because the information at issue is

QF's confidential information—not TAMU's—and QF will be harmed by its disclosure. The Office of the Attorney General has already evaluated the requested information and agrees with QF. *See* MSJ Ex. F.

During oral argument, Zachor suggested that because *some* information concerning QF's grants to TAMU had been disclosed, QF could not prevent disclosure of *any* related confidential information. This argument is also wrong. The information that was published in the Washington Post disclosed only *proposed* figures, rather than *actual* funding. That explains why these parties are before the Court: if the information sought by Greendorfer were already in the public domain, why would Greendorfer be making a TPIA request?

## **II. ARGUMENT**

### **A. QF Has Standing to Bring Suit to Protect its Own Interests**

Zachor argues that QF lacks standing to bring this suit and that TAMU is a necessary Plaintiff. But the real party whose rights are at stake is QF, not TAMU. The requested information, as the Attorney General has concluded, is protected because it is the kind of information which, if disclosed, would give an advantage to a QF competitor. This is the case because the requested information would reveal how QF values research and allocates its grants—not how TAMU spends or allocates taxpayer dollars (as wrongly suggested by Zachor). Thus, to be clear, it is QF who would be harmed by the disclosure and QF who is entitled to file suit to protect its rights.

As counsel for the Attorney General properly noted at the hearing, the TPIA permits “[a] governmental body, officer for public information, *or other person or entity*” to file a suit challenging a decision of the Attorney General. TEX. GOV'T CODE § 552.325. The

Texas Supreme Court has held that where a public information request implicates the privacy or property interests of third parties, “the PIA permits the third party to raise the issue and any applicable exception to the information’s disclosure with the Attorney General, or in [Travis County] district court, or both.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 833 (Tex. 2015) (citing TEX. GOV’T CODE §§ 552.305(b), 552.325). The TPIA’s private third party protections include the “right to file suit seeking to withhold information from a requestor.” *Id.* (citing TEX. GOV’T CODE § 552.325).

In its briefing to the Office of the Attorney General responding to Greendorfer’s backdoor attempt to gain information about QF’s litigation strategy through a second public records request, QF presented evidence that release of the requested information would give an advantage to a competitor. *See* TEX. GOV’T CODE § 552.104. It reasoned that if the amount of grant money QF issues to TAMU were made public, other organizations could compete against QF to lure TAMU’s campus away from Education City. *See* MSJ Ex. A. QF also stated that its ability to negotiate with universities other than TAMU would be hindered. *Id.* Both of those are harms to QF. Ultimately, the Office of the Attorney General agreed and issued a letter ruling holding that QF’s information responsive to Greendorfer’s second request, which included information underlying the Greendorfer request at issue in this lawsuit, would remain confidential. *See* MSJ Ex. F.

QF also argued that the requested information constituted a trade secret as well as financial information the disclosure of which would cause competitive harm. *See* TEX. GOV’T CODE §§ 552.110(a), (b). Both of these exceptions are predicated on the notion that the information at issue is QF’s information and that disclosure would be harmful to QF.

The structure of these exceptions—which are calculated to protect private parties—only underscores the fact that QF has a right to bring this action.

Finally, Zachor suggests that private third-party claims against the Attorney General that arise under the TPIA are “barred by the doctrine of sovereign immunity.” Reply at 5. In Texas, sovereign immunity is waived when the state has “consent[ed] to suit” through a “legislative enactment.” *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 695 (Tex. 2003). The TPIA is an unambiguous legislative enactment consenting to suit by private parties seeking to protect their privileged information from disclosure to requestors.

**B. TAMU is Not A Necessary Party**

When Zachor argues that TAMU is a necessary party to this suit, it does so without any support. Neither the Texas Rules of Civil Procedure, nor the TPIA, nor basic common sense require QF to join TAMU.

As the Court knows, the Texas Rules of Civil Procedure no longer contemplate “necessary parties.” Rather, the Rules distinguish between parties who may be joined if feasible and indispensable parties. *See* Tex. R. Civ. P. 39. In determining whether a party is indispensable, courts consider four factors:

[F]irst, to what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person’s absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

*Id.* Here, all four factors weigh in favor of non-joinder. First, a judgment rendered in TAMU’s absence will be of minimal prejudice. As the Office of the Attorney General

determined, the information sought would cause harm to *QF*. TAMU has the right to intervene in this suit, and has not done so. Second, the relief the parties seek will not be burdensome to TAMU: reading the Court's order and either producing or not producing documents is a ministerial matter. Third, a judgment rendered in TAMU's absence will be adequate to give Intervenor the relief it seeks: no one is arguing that if this Court determines the requested information should be produced that TAMU will refuse to comply. Fourth, Intervenor has not moved to dismiss for non-joinder, but it has an adequate remedy to protect its interests: its intervention in this suit. TAMU is not a "necessary" party.

This is evident from the text of the TPIA. The Attorney General, not the governmental body, determines what information may or may not be withheld from disclosure in response to a public information request. TEX. GOV'T CODE § 552.306. And if the Attorney General's determination would require the disclosure of a third party's private information, the third party may file suit to assert any applicable TPIA exceptions. TEX. GOV'T CODE § 552.325.

When a private third party like *QF* sues to prevent disclosure of its information, the statute requires only three things: that the third party sue the Attorney General, that the third party *not* sue the requestor directly, and that the requestor be given the opportunity to intervene. *See* TEX. GOV'T CODE § 552.325. There is no requirement in the TPIA that a governmental body subject to a request be joined in an action related to that request.

The statutory scheme stands to reason. In this instance, Greendorfer has requested payments *from* *QF* *to* TAMU. The request seeks information solely about how *QF* allocates its budget, *not* how TAMU allocates or spends taxpayer dollars. The information at issue,

then, is QF's. It is QF who will be harmed by its disclosure. And it is QF who seeks to invoke the protections of the TPIA to prevent its disclosure. TAMU is neither a "necessary" nor indispensable party to this action.

**C. QF Has Not Waived Its Right to Prevent Disclosure of Any of Its Information**

At oral argument, Zachor relied heavily on the fact that a previous contract between QF and Texas A&M was disclosed without a TPIA exception being asserted and later made publicly available on the website of the Washington Post in 2016. Zachor's reliance on a *different* disclosure of *different* information has no bearing on the request at issue in this litigation. It stands to reason that, if the information previously disclosed is the same information Greendorfer seeks here, a TPIA request would not have been necessary. Moreover, the Attorney General determined in January 2019 that a similar contract to the one published in the Washington Post was excepted from disclosure pursuant to TEX. GOV'T CODE § 552.104(a). *See id.*

As a threshold matter, the information sought in the First Greendorfer Request—a summary of money given by QF to Texas A&M—was not contained in the previously disclosed contract. That contract was a prospective agreement regarding proposed programs, *not* a retrospective summary of actual funding. The information is fundamentally different.

Further, QF has never waived its opposition to the production of the previously disclosed contract. A private party's failure to raise TPIA exceptions applicable to its information to the Attorney General does "not affect a waiver[.]" *Boeing*, 466 S.W.3d at 838 (citing TEX. GOV'T CODE § 552.305). The Attorney General recognized as much in

January 2019 when it considered (and agreed with) QF's argument that TEX. GOV'T CODE § 552.104(a) prevented disclosure of similar contracts.

On October 16, 2018, in an effort to gain information about QF's litigation strategy, Greendorfer submitted a second public information request, which sought "[a]ll correspondence and communications between Texas A&M and third parties relating to [the First Greendorfer Request]" between 2013 and October 16, 2018. The third parties identified included the same list of third parties identified in the First Greendorfer Request, including QF. Due to the wide date range and incredibly broad nature of the information requested, the potentially responsive information identified by Texas A&M included the same type of contract between it and QF that was released in 2016. QF timely presented its arguments to the Attorney General regarding TPIA exceptions applicable to the identified information, including exceptions applicable to the identified contract. In January 2019, the Attorney General determined, based on QF's asserted TPIA exceptions, that the precise type of information released in 2016 (a contract between Texas A&M and QF) was excepted from disclosure under TEX. GOV'T CODE § 552.104(a). *See* MSJ Ex. F. Not only is Zachor's reliance on a prior, irrelevant disclosure entirely misplaced, the initial disclosure itself should not have been permitted under the TPIA.

What's more, even if QF waived its rights to protect the contract published in the Washington Post from disclosure—which, under Texas law, it has not—waiver as to one class of information does not constitute waiver as to all classes of information. *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 485 n.46 (Tex. 2017) (“[W]aiver requires an intentional relinquishment of a known right or intentional conduct inconsistent with

claiming that right.”). There is no evidence that QF intended to make the requested information public.

### **III. CONCLUSION AND PRAYER**

For the reasons set forth above, Plaintiff respectfully requests that the Court grant its Motion for Summary Judgment and deny Intervenor’s motions.

Respectfully submitted,

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*Attorneys for Plaintiff The Qatar Foundation  
for Education, Science and Community  
Development*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served upon the counsel of record in accordance with the Texas Rules of Civil Procedure on the 3<sup>rd</sup> day of January, 2020.

Kimberly L. Fuchs

By e-mail at kimberly.fuchs@oag.texas.gov

Jennifer Scott Riggs

By e-mail at jriggs@r-alaw.com

/s/ D. Patrick Long

# **EXHIBIT 5**

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,  
*Plaintiff,*

v.

KEN PAXTON, TEXAS ATTORNEY  
GENERAL,  
*Defendant.*§ IN THE DISTRICT COURT OF  
§  
§  
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§  
§ TRAVIS COUNTY, TEXAS  
§  
§  
§ 200th JUDICIAL DISTRICT**DEFENDANT KEN PAXTON'S REPOSE TO  
INTERVENOR'S PLEA TO THE JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Ken Paxton, Attorney General of Texas, files this response to Intervenor Zachor Legal Institute's (Zachor's) plea to the jurisdiction.

On December 17, 2019, the day of the scheduled summary judgment hearing, Zachor filed a reply to Plaintiff Qatar Foundation for Education, Science, and Community Development's (Qatar Foundation's) motion for summary judgment. This reply contained a plea to the jurisdiction arguing that Qatar Foundation did not have standing to bring its claim under the Public Information Act (PIA). The Attorney General does not take a position on the summary judgment motions but opposes Zachor's plea to the jurisdiction.

**I. Response to Plea**

In its plea, Zachor argues, "[n]o provision of the PIA authorizes a third party that asserts a privacy or property interest to file a lawsuit to challenge a decision of the Attorney General." Zachor Reply at 4. This statement contradicts the plain text of the PIA and Supreme Court precedent.

**A. The PIA permits a private party to file suit under section 552.325.**

Sections 552.324 and .325 of the PIA authorize parties to file suit against the Attorney General to challenge a letter ruling. Tex. Gov't Code §§ 552.324, .325. While section 552.324 applies solely to a governmental body, section 552.325 contains no such limitation and expressly authorizes suits by third parties.

Section 552.325 is entitled: PARTIES TO SUIT SEEKING TO WITHHOLD INFORMATION. Tex. Gov't Code § 552.325. This section uses the term “parties,” rather than the term “governmental bodies.” *Id.* Because the term “governmental body” is used in section 552.324, the use of “parties” demonstrates the Legislature’s intention that section 552.325 apply to a broader group of litigants than the immediately preceding section.

The text of section 552.325 further supports an expansive reading of the term “parties.” That section reads, “[a] governmental body, officer for public information, *or other person or entity* that files a suit seeking to withhold information . . . .” Tex. Gov't Code § 552.325 (emphasis added). “Governmental body” and “officer for public information” are both explicitly listed; therefore, in order for the phrase “or other person or entity” to have meaning, third parties whose information has been requested, such as Qatar Foundation, must have standing to bring suit. Rules of statutory construction require a presumption that every word or phrase in a statute was included for a purpose. *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). Therefore, this Court must presume that the inclusion of “person or entity” in section 552.325 shows the Legislature’s intent *not* to limit standing for PIA lawsuits to governmental bodies.

**B. Zachor's standing argument has been foreclosed by the Supreme Court in *Boeing*.**

Even if the statute were ambiguous regarding a third party's ability to bring suit to challenge a letter ruling, Zachor's argument has been addressed and rejected by the Supreme Court. In *Boeing*, the Attorney General argued that a third party did not have standing to assert section 552.104 of the PIA. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 833 (Tex. 2015). The Supreme Court, however, looked to the text and found no such limitation, holding that Boeing could assert section 552.104 to withhold its information. *Id.*

While Zachor argues, correctly, that the issue of third party standing was not squarely at issue in *Boeing*, the Court in that case presumed that standing existed. The Court framed the issue as "whether Boeing has the right under the Act to assert its own interests in protecting [its] information." *Id.* at 837. The Court then held that it does, stating, "Boeing has the right to protect its own privacy and property interest through the judicial remedy section 552.325 provides." *Id.* at 842. This unambiguous statement is a recognition that section 552.325 provides a remedy for third parties like Qatar Foundation to bring suit under section 552.325.

Zachor further argues that if Qatar Foundation could bring a suit, it would only be valid if it also sued Texas A&M. Zachor Reply at 5. However, Zachor provides no support for this position, and neither the statute nor the case law make such a distinction.

The Supreme Court's opinion in *Boeing* precludes the argument made by Zachor, and this Court should deny the plea to the jurisdiction.

## II. Prayer

The Attorney General asks this Court to deny the plea to the jurisdiction filed by Zachor in the above-captioned lawsuit.

Respectfully submitted,

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Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

CRAIG J. PRITZLAFF  
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/s/ Kimberly Fuchs

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant Ken Paxton's Response to Intervenor's Plea to the Jurisdiction has been served, on January 3, 2020, on the following attorneys-in-charge, by e-service and/or e-mail:

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/s/ Kimberly Fuchs  
KIMBERLY FUCHS  
***Attorney for Defendant***

# **EXHIBIT 6**



JAN 21 2020

At 10:00 A M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,  
*Plaintiff,*

v.

KEN PAXTON, TEXAS  
ATTORNEY GENERAL,  
*Defendant,*

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IN THE DISTRICT COURT  
OF

200th JUDICIAL DISTRICT

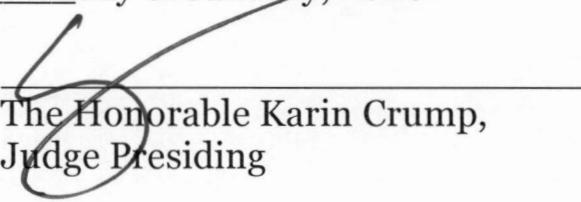
TRAVIS COUNTY, TEXAS

### ORDER GRANTING PLEA TO THE JURISDICTION

On December 17, 2019, the Court heard Intervenor Zachor Legal Institute's Motion for Summary Judgment and alternative Plea to the Jurisdiction and the Plaintiff Qatar Foundation's Cross Motion for Summary Judgment in the above styled and numbered cause of action. The Court afforded the Plaintiff Qatar Foundation and the Defendant Attorney General the opportunity to submit responses to Zachor's Plea to the Jurisdiction after the hearing. After consideration of the pleadings, the cross motions for summary judgment, the competent summary judgment evidence, the plea to the jurisdiction, the arguments of all parties, and the applicable law, the Court has determined that it does not have jurisdiction over Plaintiff's claims.

IT IS, THEREFORE, ORDERED that Intervenor Zachor's Plea to the Jurisdiction shall be and is hereby GRANTED and that this case shall be and is hereby dismissed for lack of jurisdiction.

Signed this 17<sup>th</sup> day of January, 2020.

  
The Honorable Karin Crump,  
Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

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# **EXHIBIT 7**

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,*Plaintiff,*

v.

KEN PAXTON,  
TEXAS ATTORNEY GENERAL*Defendant.*§  
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT COURT

**PLAINTIFF’S MOTION TO SUSPEND  
ENFORCEMENT OF JUDGMENT PENDING APPEAL  
AND TO SET AMOUNT REQUIRED TO SUPERSEDE JUDGMENT**

Pursuant to Texas Rules of Appellate Procedure 24.1 and 24.2, Plaintiff Qatar Foundation for Education, Science and Community Development (“QF”) files this Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment and would show the Court as follows:

1. On October 12, 2018, QF—a private, nonprofit organization located in Doha, Qatar—brought this action to prevent the disclosure of confidential and sensitive financial information in response to a request under the Texas Public Information Act (the “Act”).

2. Final judgment of this matter was rendered by the Court’s Order Granting Plea to the Jurisdiction that was signed on January 17, 2020 and entered into the record on January 21, 2020 (the “Judgment”). The Judgment held “that this case shall be and is hereby dismissed for lack of jurisdiction,” which disposed of all parties and all claims.

3. Contemporaneously with the filing of this Motion, QF files its Notice of Appeal. QF intends to pursue its appeal to the Third Court of Appeals and, if necessary, to the Supreme Court of Texas.

4. Pursuant to Texas Rule of Appellate Procedure 24.1, QF desires to suspend enforcement of the Judgment pending determination of the appeal by posting a supersedeas bond.

5. Because the Judgment is for something other than money or an interest or property, the amount of the bond is governed by Texas Rule of Appellate Procedure 24.2(a)(3), which provides:

When the judgment is for something other than money or an interest in property, *the trial court must set the amount and type of security that the judgment debtor must post*. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.

TEX. R. APP. P. 24.2(a)(3) (emphasis added). The Texas Supreme Court has explained that, while a trial court has discretion with regard to the amount and type of security that the judgment debtor must post under Rule 24.2(a)(3), it does not have discretion to “refuse to supersede a judgment requiring production of information under the [Texas Public Information] Act ....” *In re Dallas Area Rapid Transit*, 967 S.W.2d 358, 360 (Tex. 1998).

6. Accordingly, pursuant to Texas Rule of Appellate Procedure 24.2(a)(3), QF requests that the Court set the amount of a supersedeas bond.

7. QF submits that a nominal bond is appropriate because none of the other parties will suffer any loss or damage as a result of suspending the Judgment while the appeal is pending.

8. The named Defendant in this action, the Office of the Texas Attorney General, does not maintain the public records at issue and otherwise has no direct interest in the timing of when, if ever, the information at issue is produced. Rather, the role of the Attorney General is to provide an open records ruling regarding whether the requested information is exempted from disclosure under the Act.

9. The intervening party, Zachor Legal Institute (“Zachor”), would also not be harmed by suspending the Judgment during the appeal. Zachor did not even request the public records at issue—they were requested by a California attorney named Marc Greendorfer (“Greendorfer”). Moreover, Zachor has not identified—and could not substantiate—any monetary loss or property damage that could be caused by maintaining the status quo during the appeal.

10. In contrast, QF would be irreparably damaged if the Court were to refuse to supersede the Judgment pending appeal.

11. The records at issue contain confidential and sensitive financial information concerning the relationship between QF and Texas A&M University (“Texas A&M”). QF’s mission is to lead human, social and economic development in Qatar through investing in education, science and research. To further that mission, QF partnered with major universities around the world, including six universities from the United States including Texas A&M, to open and operate branch campuses at Education City. QF has awarded

research grants, gifts, and other funding to those partner universities based on the research they perform and the services they provide to students.

12. The negotiation of these arrangements is a confidential process, as is the amount of funding awarded. If the negotiation process or the specific amount of funding were disclosed it would cause competitive harm to QF and the partner universities. QF competes with private organizations and governments throughout the Middle East to attract major research universities to their home countries.

13. Indeed, in relation to a different TPIA request seeking information of the same nature, QF objected, and the Attorney General found that documents and information containing the amounts and types of funding received by Texas A&M from QF constituted “information that, if released, would give advantage to a competitor or bidder” and directed Texas A&M to withhold this information under section 552.104(a) of the TPIA.

14. If the Court declines to permit the Judgment to be superseded, QF will be irreparably damaged. Once the confidential and sensitive information is made public, the damage to QF will have already been done and there is no way to un-ring that bell. Indeed, the Texas Supreme Court recognized that the ability to supersede a judgment requiring production of information is necessary to preserve the right of appeal because “once the requested information is produced, an appeal is moot.” *In re Dallas Area Rapid Transit*, 967 S.W.2d at 360.

15. Because QF will be irreparably injured if the enforcement of the Judgment is not suspended pending appeal, no amount of security posted by Zachor would be sufficient to protect QF against “any loss or damage” caused during the pendency of the appeal.

16. Accordingly, QF requests the Court require a nominal supersedeas bond of \$1,000.00, or such other amount as the Court deems appropriate.

**PRAYER**

WHEREFORE, Plaintiff respectfully requests that the Court suspend the enforcement of the Judgment during the pendency of the appeal and fix the amount of a supersedeas bond at \$1,000.00 or at such other amount as the Court deems necessary.

DATED and FILED on February 13, 2020.

Respectfully submitted,

/s/ Amanda D. Price

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*Attorneys for Plaintiff The Qatar Foundation  
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### **CERTIFICATE OF CONFERENCE**

I hereby certify that on February 12, 2020, counsel for Plaintiff conferred with counsel for Defendant, the Office of the Texas Attorney General, and Defendant is unopposed to the requested relief. On February 13, 2020, counsel for Plaintiff conferred with counsel for Intervenor Zachor Legal Institute via telephone message and email. Intervenor's counsel did not respond prior to the filing of this motion.

/s/ Amanda D. Price

Amanda D. Price

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Civil Procedure on the 13th day of February, 2020 on each of the following persons listed below by the means indicated:

#### **VIA EFILETEXAS.GOV E-SERVICE:**

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/s/ Amanda D. Price

Amanda D. Price

# **EXHIBIT 8**

**CAUSE NO. D-1-GN-18-006240**

<b>QATAR FOUNDATION FOR</b>	§	<b>IN THE DISTRICT COURT</b>
<b>EDUCATION, SCIENCE AND</b>	§	
<b>COMMUNITY DEVELOPMENT,</b>	§	
<b><i>Plaintiff,</i></b>	§	
	§	
<b>v.</b>	§	<b>200<sup>TH</sup> JUDICIAL DISTRICT</b>
	§	
<b>KEN PAXTON,</b>	§	
<b>TEXAS ATTORNEY GENERAL,</b>	§	
<b><i>Defendant.</i></b>	§	<b>OF TRAVIS COUNTY, TEXAS</b>

**ZACHOR LEGAL INSTITUTE'S RESPONSE  
TO MOTION TO SUSPEND ENFORCEMENT OF JUDGMENT**

**I. Summary of Response**

Texas Rules of Appellate Procedure (TRAP) Rule 24 governs the suspension of enforcement of judgments pending appeal in civil cases. Because this case was dismissed for want of jurisdiction, there is no "judgment" to be enforced. For that reason, there is no enforcement to be suspended. What the Qatar Foundation is attempting to do is to set up a straw judgment that it can suspend enforcement of and, thereby, obtain what amounts to an injunction against a nonparty – Texas A & M University. That is an improper use of Rule 24.

**II. TRAP Rules 24 and 25**

Both TRAP Rules 24 and 25 apply to "judgments," not to orders of dismissal. Under TRAP Rule 25.1(h),

The filing of a notice of appeal does not suspend enforcement of the *judgment*. Enforcement of the *judgment* may proceed unless:

- (1) The *judgment* is suspended in accordance with Rule 24; or

- (2) The appellant is entitled to supersede the *judgment* without security by filing a notice of appeal.

TEX. R. APP. P. 25.1(h)(emphasis added).

Under TRAP Rule 24.1, a “judgment debtor” is entitled to supersede a “judgment” while pursuing an appeal. *See* TEX. R. APP. P. 24.1. TRAP Rule 24.1 outlines the requirements for suspending enforcement of a judgment pending an appeal in civil cases, which include by agreement, with a bond, with a cash deposit in lieu of bond, or with alternative security set by the trial court. TRAP Rule 24.2(1) and (2) outline how the amount of the bond, deposit, or security is to be determined. TEX. R. APP. P. 24.2. Rule 24.2(3) governs how the amount of the bond, deposit, or security is to be determined for judgments other than those for money or an interest in property. TEX. R. APP. P. 24.2 (3).

But TRAP Rule 24.2(3) nonetheless applies to *judgments*:

(3) *Other Judgment*. When the *judgment* is for something other than money or an interest in property, the trial court must set the amount and type of security that the *judgment debtor* must post. The security must adequately protect the *judgment creditor* against loss or damage that the appeal might cause. But the trial court may decline to permit the *judgment* to be superseded if *the judgment creditor* posts security ordered by the trial court in an amount and type that will secure the *judgment debtor* against any loss or damage caused by the relief granted the *judgment creditor* if an appellate court determines, on final disposition, that that relief was improper. When the *judgment debtor* is the state, a department of this state, or the head of a department of this state, the trial court must permit a *judgment* to be superseded except in a matter arising from a contested case in an administrative enforcement action.

TEX. R. APP. P. 24.2 (3).

In support of its request, the Qatar Foundation attempts to rely on the decision in *In re Dallas Area Rapid Transit*, 967 S.W.2d 358 (Tex. 1998). In that case, the trial court entered judgment against the Dallas Area Rapid Transit Authority (DART) ordering it to disclose information requested by the *Dallas Morning News* under the Texas Public Information Act. DART appealed and argued that the trial court had abused its discretion in denying *supersedeas* of the judgment pending DART's appeal. The Texas Supreme Court agreed.

The *DART* case, however, does not apply here for several reasons. First, a final judgment was at issue in that case – not a dismissal for lack of jurisdiction as in this case. Second, the governmental body that actually held the information, DART, was the party appealing the adverse judgment. Here, the governmental body that holds the information, Texas A & M University (TAMU), did *not* file a lawsuit to challenge the decision of the Attorney General and was not otherwise named as a party in this case. Third, the *DART* case was decided before the decision in *In re State Board for Educator Certification*, 452 S.W.3d 802 (Tex. 2014), in which the Texas Supreme Court held that a governmental body does *not* have an absolute right to supersede an adverse judgment.

Moreover, all that the Qatar Foundation would be entitled to is to return the case to the position it was in before the order of dismissal – which was *not* with the benefit of any order preventing disclosure of the requested information. *Supersedeas* is a writ that preserves the *status quo* of a matter as it existed before the issuance of a final judgment from which an appeal is being taken. *El Caballero*

*Ranch, Inc., v. Grace River Ranch, LLC*, ---S.W.3d ---, 2016 W.L. 4444400,\*3 (Tex. App. – San Antonio 2016, no pet.). Here, the Qatar Foundation does not have an order prohibiting disclosure to fall back on – the Attorney General opinion the Qatar Foundation attempted to “appeal” required disclosure of certain information, with only identifying information redacted.

As the Fort Worth court of appeals stated when faced with a similar “nothing to supersede” situation:

There was nothing, other than the judgment for costs, for Bradshaw to supersede, as the trial court’s take-nothing judgment against her left her and the opposing parties in the same position they had been in prior to her lawsuit. See Tex. R. App. P. 24.2(a) (describing the types of judgment that can be superseded-other than conservatorship or cases involving a governmental entity-as judgments for recovery of money, real property, and “other”; all three of these require that there be a judgment debtor); *In re marriage of Richards*, 991 S.W.2d 30, 31–32 (Tex. App.-Amarillo 1998, no pet.) (noting, in divorce appeal, that when a judgment does not provide for the recovery of money or property in the possession of the other party, there is nothing for the appellee to execute nor any need of the appellant to supersede an attempt by the appellee to execute on the decree); see also Robert B. Gilbreath and Curtis L. Cukjati, *Superseding the “Other Judgment,”* 12 App. Advoc. 11, 11–13 (1998) (discussing how to handle *supersedeas* situations in which judgments for something other than money or property occur; a take-nothing judgment is not listed in the summary of case law describing “other judgments” that can be superseded). Here, because costs were the only item awarded in the otherwise take-nothing judgment, there was no other enforcement item to suspend. In other words, “Nothing comes from nothing. Nothing ever could.” Richard Rogers and Oscar Hammerstein II, *Something Good*, on *The Sound of Music* (1959).

*Bradshaw v. Sikes*, (not reported in S.W.3d) 2013 W.L. 978782, n. 12 (Tex. App. – Fort Worth 2013, pet. denied); accord *Kaldis v. Aurora Loan Services*, 424 S.W.3d 729, 737-38 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2014, no pet.).

For these reasons, the Qatar Foundation is not entitled to supersede the order of dismissal. At most, the Qatar Foundation would be entitled to being returned to the place it was in before the order of dismissal – it would be deemed simply to have a case pending in district court against the Attorney General. That is not an order to withhold documents or to produce documents, neither of which could be issued against a non-party. Otherwise, any party could obtain what amounts to an injunction against non-parties, no matter how questionable the basis for jurisdiction, simply by filing a lawsuit and appealing an order dismissing the case for lack of jurisdiction.

### **III. Security by Judgment Creditor**

Finally, should the Court consider the order of dismissal akin to a final judgment, TRAP Rule 24.2(3) nonetheless confers discretion on the trial court to deny *supersedeas*:

[T]he trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.

TEX. R. APP. P. 24.2 (3).

Despite the “sky is falling” arguments in the Qatar Foundation’s motion, the Qatar Foundation fails to show the nexus between the harm it fears and the simple fact of the dismissal of its claims. No one knows how TAMU will react to the current state of affairs – it is not a party. The Qatar Foundation cannot show how it will be irreparably injured simply by the dismissal of its claims in this case.

The Qatar Foundation has argued for a nominal bond if it is allowed to supersede the order of dismissal. Zachor urges that what is good for the Qatar Foundation is good against the Qatar Foundation. The Zachor Legal Institute asks that *supersedeas* be denied and, in an excess of caution, that the Court fix the amount of the bond that Zachor must post at \$1,000.00.

### **PRAYER**

For the reasons stated above, Zachor respectfully prays that the Court deny the Qatar Foundation's motion to Suspend Enforcement of Judgment Pending Appeal because there is no judgment to supersede, or, in the alternative, that the Court exercise its discretion to deny *supersedeas* and to fix the amount of bond at \$1,000.00, or, in the alternative, that the Court limit *supersedeas* to a statement that the case will be deemed to still be pending and deny the Qatar Foundation's request for orders regarding disclosure of the information at issue.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by e-service on this 26<sup>th</sup> day of February, 2020, to:

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Jennifer S. Riggs  
Jennifer S. Riggs

# **EXHIBIT 9**

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR  
EDUCATION, SCIENCE AND  
COMMUNITY DEVELOPMENT,*Plaintiff,*

v.

KEN PAXTON,  
TEXAS ATTORNEY GENERAL*Defendant.*§  
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT COURT

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO SUSPEND  
ENFORCEMENT OF JUDGMENT PENDING APPEAL  
AND TO SET AMOUNT REQUIRED TO SUPERSEDE JUDGMENT**

Plaintiff Qatar Foundation for Education, Science and Community Development (“QF”) files this Reply in Support of its Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment and would show the Court as follows:

**INTRODUCTION**

QF seeks to maintain the status quo pending appeal in accordance with settled Texas law. In contrast, Zachor Legal Institute (“Zachor”) presents unsupported arguments that would upend the status quo and deprive QF of a meaningful appeal. Zachor’s arguments have no merit and do not support such a profoundly incorrect, unfair, and irrevocable result.

QF brought this lawsuit pursuant to Texas Gov’t Code § 552.325 and controlling Supreme Court authority to prevent the disclosure of its confidential, sensitive, and trade secret information under the Texas Public Information Act. *Boeing Co. v. Paxton*, 466

S.W.3d 831, 842 (Tex. 2015) (“Boeing has the right to protect its own privacy and property interest through the judicial remedy section 552.325 provides.”). The Court did not reach the question of whether QF’s information was protected from disclosure and instead granted Zachor’s plea to the jurisdiction.

QF has appealed that final judgment and respectfully requests that the Court supersede the judgment and maintain the status quo by preventing the disclosure of QF’s confidential information while the appeal is pending. Zachor opposes this modest relief based on two meritless arguments. Zachor first argues that an order granting a plea to the jurisdiction is not a “judgment” and therefore cannot be superseded. That argument is simply wrong and is completely unsupported.

Zachor then argues that QF will not be irreparably injured in the absence of a stay. In doing so, Zachor ignores the evidence before the Court of the harm QF faces and the stark reality that the disclosure of confidential information cannot be undone. In the absence of the requested relief, QF’s appeal on the jurisdictional issue and further proceedings on the merits would be futile—“once the requested information is produced, an appeal is moot.” *In re Dallas Area Rapid Transit*, 967 S.W.2d 358, 360 (Tex. 1998). Texas Rule of Appellate Procedure 24 exists precisely to prevent that unjust result.

### **ARGUMENT**

#### **A. The Court’s Order Granting A Plea To The Jurisdiction Is Subject To Texas Rule of Appellate Procedure 24.**

Zachor argues, without authority, that an order granting a plea to the jurisdiction is not a “judgment” and therefore cannot be superseded. This is not the law. “All final

judgments, absent a statutory prohibition, may be superseded pending appeal by the filing of a proper supersedeas bond.” *Elizondo v. Williams*, 643 S.W.2d 765, 767 (Tex. App.—San Antonio 1982, no writ). A grant of a plea to the jurisdiction is a final judgment. *See Morris v. Houston Indep. Sch. Dist.*, 388 S.W.3d 310, 312, fn. 2 (Tex. 2012) (“[T]he court ... rendered a final judgment granting the taxing entities’ plea to the jurisdiction and dismissing the case.”); *NBL 300 Grp. Ltd. v. Guadalupe-Blanco River Auth.*, 537 S.W.3d 529, 532 (Tex. App.—Austin 2017, no pet.) (“[T]he trial court entered a final judgment in favor of GBRA, granting the GBRA’s plea to the jurisdiction and dismissing NBL’s case in its entirety.”).

Indeed, the Dallas Court of Appeals recently recognized that an order granting a plea to the jurisdiction was a “final judgment” and issued injunctive relief to maintain the status quo while that order was on appeal. *In re Park*, No. 05-19-00774-CV, 2019 Tex. App. Lexis 9032 (Tex. App.—Dallas Oct. 10, 2019, no pet.). The plaintiff in *Park* filed suit to prevent the removal of a monument by the city and the trial court issued a “final judgment” granting the city’s plea to the jurisdiction. *Id.* at \*2. The plaintiff appealed and sought an injunction to prevent the monument from being moved while the appeal was pending. *Id.* at \*2. The court granted the injunction and ordered the plaintiff to post a supersedeas bond, holding that “if this Court should conclude on the merits of the underlying appeal that the trial court erred [in granting the plea to the jurisdiction] and the Monument has already been moved, demolished, damaged, or sold this Court’s judgment would be a nullity.” *Id.* at \*4.

Zachor does not cite any authority to support the notion that an order granting a plea to the jurisdiction is not a judgment that may be superseded. The bulk of Zachor’s argument simply recites Texas Rules of Appellate Procedure 24 and 25—which refer to suspension of a “judgment,” and the existence of a “judgment creditor” and “judgment debtor.” As just noted, an order granting a plea to the jurisdiction is a final judgment. Moreover, references to a “judgment creditor” or “judgment debtor” obviously do not limit Rules 24 and 25 to monetary judgments since Texas Rule of Appellate Procedure 24.2(a)(3) explicitly allows a court to supersede a judgment “for something other than money or an interest in property.”

The few cases Zachor cites do not even indirectly support its argument:

- *El Caballero Ranch, Inc. v. Grace River Ranch, L.L.C.*, No. 04-16-00298-CV, 2016 Tex. App. LEXIS 9180 (Tex. App.—San Antonio Aug. 24, 2016, no pet.). This case did not involve a plea to the jurisdiction. The court simply required a judgment creditor to post a supersedeas bond pending the outcome of the appeal of a final judgment declaring rights to real property. *Id.* at \*15-16.
- *Bradshaw v. Sikes*, No. 02-11-00169-CV, 2013 Tex. App. LEXIS 2723 (Tex. App.—Fort Worth Mar. 14, 2013, pet. denied). The trial court granted a supersedeas bond pending appeal of a take-nothing judgment. *Id.* at \*4. In the passage Zachor quotes, the appellate court rejected the argument that the supersedeas bond deprived the trial court of jurisdiction to decide the merits of a separate, but related action. *Id.* at \*14-15.
- *Kaldis v. Aurora Loan Servs.*, 424 S.W.3d 729 (Tex. App.—Houston [14th Dist.] 2014, no pet.). This case did not involve a plea to the jurisdiction. In the pages Zachor cites, the court declined to a stay a take-nothing judgment where the “main goal” of the stay was to postpone enforcement of a final judgment in a separate proceeding for foreclosure and eviction. *Id.* at 737-738.

Simply put, Zachor's argument is baseless. An order granting a plea to the jurisdiction is a judgment that is subject to supersedeas under Rules 24 and 25. The real issue, therefore, is the appropriate amount of the supersedeas bond.

**B. Zachor Has Identified No Harm Whatsoever From Maintaining The Status Quo; Whereas QF Will Be Irreparably Harmed.**

Zachor's arguments regarding the appropriate amount of the supersedeas bond turn the proper standard on its head. Under Rule 24.2(a)(3), the first question is what amount would be sufficient to "adequately protect the judgment creditor against loss or damage that the appeal might cause." Zachor is the judgment creditor, and it presented no evidence whatsoever of any loss it would face by waiting until after the appeal is resolved to potentially receive the records. Accordingly, a nominal bond is sufficient to protect Zachor while the appeal is pending.

A second question under Rule 24.2(a)(3) is whether, if the judgment is not superseded, there is an amount of security that would protect the judgment debtor from harm. QF is the judgment debtor and the record is clear that QF will suffer unquantifiable irreparable harm if the requested information is disclosed. *See* Exhibit A to Plaintiff's Motion for Summary Judgment, Declaration of Michael A. Mitchell (also attached hereto as Exhibit A). Mr. Mitchell has testified that QF's negotiations and arrangements with Texas A&M, including the amount of funding, are highly confidential and are protected within QF through restricted access and confidential designations. *Id.* at ¶¶ 10, 15. QF competes with private organizations and governments throughout the Middle East to attract partner universities to their home countries. *Id.* at ¶ 12. Information regarding the

negotiations and funding with Texas A&M has substantial value to QF and its competitors, the disclosure of which would cause competitive harm to QF. *Id.* at ¶¶ 10, 16-17. Specifically, it would allow competing organizations to gain a competitive advantage by having the information necessary to outbid or offer more favorable terms to universities. *Id.* at ¶ 17. Indeed, the Attorney General has already determined that such information, “if released, would give advantage to a competitor or bidder.”

The Supreme Court has recognized that the harm caused by the improper release of such information is irreparable because it denies a meaningful remedy to the party seeking to prevent the disclosure in the first instance. *In re Dallas Area Rapid Transit*, 967 S.W.2d at 360 (“[O]nce the requested information is produced, an appeal is moot.”). Here, unless the status quo is maintained, not only would the appeal of the jurisdictional issue be moot, but if QF prevails on appeal it would then be deprived of a trial on the merits since the records at issue would have already been disclosed.

Zachor seeks to distinguish *DART* on three meritless grounds. First, Zachor argues that *DART* involved a final judgment on the merits, not dismissal for lack of jurisdiction. As discussed above, dismissal for lack of jurisdiction is a final judgment, and thus subject to supersedeas. Second, Zachor argues that in *DART* the public body holding the information was the plaintiff, but that is irrelevant to the Court’s finding that disclosing records while the appeal is pending would render the appeal moot. In *DART*, as in this case, it was the appellant’s information that was requested, and thus it was the appellant who would be injured by disclosure of that information.



Third, Zachor argues that *DART* was decided before *In re State Bd. For Educator Certification*, 452 S.W.3d 802 (Tex. 2014). That case was not a public records case and it approved the prior holding in *DART*, noting that it was “troubled that the trial court’s refusal to stay its judgment effectively denied DART any appeal whatsoever, ‘for once the requested information is produced, an appeal is moot’—a result ‘the rule does not permit.’” *Id.* at 806. Moreover, the Court in *State Bd. For Educator Certification* found it appropriate to deny supersedeas in order to maintain the status quo, by allowing the appellee to continue to teach while the state appealed a trial court’s order overturning an administrative revocation of his license. Here, it is granting supersedeas that will maintain the status quo.

No amount of security posted by Zachor would be sufficient to secure QF against “any loss or damage caused” during the pendency of the appeal as required for the Court to decline to permit QF to supersede the judgment under Texas Rule of Appellate Procedure 24.2(a)(3). Likewise, Zachor has failed to offer any evidence of how it would be harmed by maintaining the status quo—or even its intended use for the requested information—and has thus presented no basis to deny QF’s request to supersede the judgment.

### **PRAYER**

WHEREFORE, Plaintiff respectfully requests that the Court suspend the enforcement of the Judgment during the pendency of the appeal, including ordering that QF’s confidential information should not be disclosed, and fix the amount of a supersedeas bond at \$1,000.00 or at such other amount as the Court deems necessary.

DATED and FILED on February 27, 2020.

Respectfully submitted,

/s/ Amanda D. Price

---

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*Attorneys for Plaintiff The Qatar Foundation  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Civil Procedure on the 27th day of February, 2020 on each of the following persons listed below by the means indicated:

### **VIA EFILETEXAS.GOV E-SERVICE:**

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*/s/ Amanda D. Price*

\_\_\_\_\_  
Amanda D. Price

# EXHIBIT A

### **DECLARATION OF MICHAEL A. MITCHELL**

1. My name is Michael A. Mitchell. My date of birth is February 26, 1964, and my address is P.O. Box 5825, Office of the General Counsel, Doha, Qatar.

2. I am General Counsel of the Qatar Foundation for Education, Science and Community Development ("QF"), located in Doha, Qatar. I have held this position since 2016.

3. I previously held the position of Vice President and Senior Associate General Counsel at The Ohio State University from 2013 until 2016, and the position of Associate Vice President and Associate General Counsel at The Ohio State University from 2004 until 2013. In that capacity, I participated in the negotiation and administration of numerous contractual matters, research grants, and gifts, including provisions designed to protect confidential commercial and financial information and trade secrets.

4. QF is a private, non-profit organization with a mission to lead human, social, and economic development in Qatar through investment in education, science, and research. QF is not an agency or subdivision of the Qatar government.

5. An important component of QF's mission is the development known as "Education City." Launched by QF in 1997, Education City houses educational facilities for students from school age to graduate and postgraduate studies, with branch campuses from some of the world's major universities. In addition to serving as the home to research centers and laboratories, Education City also serves as a forum where universities share research and forge relationships with businesses and institutions in public and private sectors. Education City is home to students from over 50 countries and offers opportunities for the advancement of knowledge and research across many disciplines.

6. QF has partnered with major universities around the world to open and operate branch campuses at Education City (hereinafter the “Partner Universities”). Six of these Partner Universities are from the United States: Texas A&M University, Carnegie Mellon University, Georgetown University School of Foreign Service, Northwestern University, Virginia Commonwealth University, and Weill Cornell Medical College.

7. In my role as General Counsel, I possess first-hand knowledge of the negotiations and contractual relationships between QF and the Partner Universities.

8. I have personally participated in or provided guidance regarding contracts, research grants, gifts and other types of funding made to the Partner Universities in Education City. As part of my responsibilities, I oversee the negotiation, drafting, and execution of contracts providing research grants and other funding to the Partner Universities. I participate in every stage of the contract process, including ensuring that both QF and Partner Universities abide by agreements. I am familiar with the terms and requirements of these contracts. I also provide guidance and interpretation regarding contractual relationships with all Partner Universities.

9. QF expends substantial time, effort, and financial resources to attract and retain major universities to Education City. QF considers its expertise and knowhow in attracting and retaining the universities to be a valuable asset.

10. QF has awarded grants, contracts, gifts and other funding to the Partner Universities based on the research the universities perform and the services provided to students. The size of the research grants and funding to the Partner Universities is the result of extensive, confidential negotiations between QF and each university. The negotiation of these arrangements is a confidential process, as is the amount of funding awarded. If the negotiation process or the specific

amount of funding were disclosed it would cause competitive harm to QF and the Partner Universities.

11. While the Partner Universities are expected to maintain confidentiality, QF is supportive of each university's compliance with all reporting requirements. Pursuant to these confidentiality agreements, each partner university that receives funding from QF is expected to maintain the confidentiality of negotiations and agreements between the parties, while still complying with all governing laws otherwise requiring disclosure of specific information related to those negotiations and agreements. Not only is QF fully supportive of our Partner Universities complying with all lawful request for information relating to our partnerships with them, we contractually require them to comply with all applicable laws.

12. QF competes with private organizations and governments throughout the Middle East to attract partner universities to their home countries. These organizations and governments have expended substantial time, effort, and money to establish over fifty branch campuses of foreign partner universities throughout the region. The competitors include organizations and governments in Bahrain, Egypt, Kuwait, Lebanon, Oman, Saudi Arabia, Tunisia, the United Arab Emirates, and Yemen.

13. When QF determines that it will provide a grant to a Partner Universities, it assesses the commercial and social value of the research that is to be performed.

14. Every agreement with a Partner Universities contains a confidentiality provision restricting disclosure of, among other information, QF's business methods, financial information, trade secrets, and financial and accounting policies.

15. Within QF, we consider this information highly confidential. We protect the confidentiality of this information by restricting access, marking it as confidential, requiring

employees to acknowledge confidentiality obligations, storing the originals in a secure environment (a safe), and storing electronic versions pursuant to strict IT security requirements. Even within QF, knowledge of negotiations, the content of formal agreements, and precise award amounts to the Partner Universities is limited to a subset of employees who have a need to know the information in order to execute their job duties. The number of employees who are aware of this information is approximately 20 people. QF has nearly 3400 total employees.

16. The negotiations, formal agreements, and specific amounts of the various agreements with our Partner Universities have substantial value to QF and also to its competitors. First, this information evidences QF's strategic choices regarding investments in research and educational programs at these campuses. Second, the secrecy of this information gives QF a strategic advantage in negotiating with our Partner Universities.

17. Disclosure of the requested information would result in competitive harm to QF. This competitive harm would include damage caused by rival organizations and governments, which would gain a competitive advantage through disclosure by having the information necessary to offer more funding than QF currently provides, or to offer other, more favorable terms to universities.

18. Since 2003, Texas A&M has had a presence at Education City. QF and Texas A&M have worked jointly on numerous projects to the benefit of Texas A&M students, and QF has issued research grants, contracts, gifts and other funding to Texas A&M over the years.

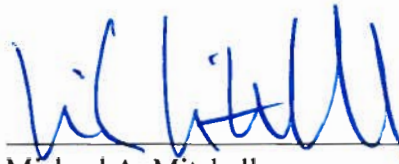
19. In response to two public information requests filed with Texas A&M, QF has objected, and sought to protect from disclosure the release of information that would reveal the specific allocation of payments related to contractual matters, research grants, and gifts, on the grounds that disclosure would compromise competitive and commercially-sensitive information.



QF does not, in any way, seek to protect from public disclosure the extent and details of our activities and projects with our Partner Universities, merely the precise amounts and allocation of payments for these activities and projects.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Doha, Qatar, on the 10<sup>th</sup> day of August, 2019.

A handwritten signature in blue ink, appearing to read 'Michael A. Mitchell', is written over a horizontal line.

Michael A. Mitchell